HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 636 of 2004

Deep Singh Adhikari
S/o Sri Jashod Singh
R/o Dhaura Patwari Dhaura
Tehsil & District Almora
At present Dharanaula Almora
.....Applicant

Versus

1. State of Uttaranchal
2. Smt. Kamla Devi
W/o Deep Singh Adhikari
R/o Dhaura Patwari Dhaura
Tehsil & District Almora
At present village Dewli
Post Lodhia
Tehsil & District Almora .....Respondents

Date:- 15th July, 2005

Hon'ble J.C.S. Rawat, J.

Heard Ms. Seema Sirohi learned counsel for the applicant-husband, Ms. Geeta Parihar learned counsel for the respondent No.2-wife and Sri S. Chaudhary learned A.G.A. for the State.

The petition under section 482 Cr.P.C. has been filed against the order dated 8.12.2004 passed by the learned Sessions Judge, Almora in criminal revision No.8/2004 & No.9/2004 and order dated 14.6.2004 passed by Special Judicial Magistrate, Almora in criminal case No.13/2004.

It is an admitted that the marriage was solemnized between the applicant-Deep Singh Adhikari and the respondent No.2-Smt. Kamla Devi according to Hindu rites and customs. Thereafter, an application under section 125 Cr.P.C. was filed by the respondent No.2 on 6.10.2003 before the Special Judicial Magistrate, Almora with the allegations that the applicant-husband has neglected and refused to maintain her. It was also alleged that she was treated with cruelty and she was

compelled to live separately from her husband. It was further alleged that she was unable to maintain herself and whereas the applicant is in service and getting Rs. 6500/- per month as salary. But, he is not giving her any amount towards maintenance. The petition was contested by the applicant on the ground that the respondent No.2 has left the house of the applicant without any sufficient cause and she is earning Rs. 1000/- per month from the agricultural sale proceeds at her parental house.

It is also admitted that out of their wedlock, two children were born; one daughter and one son aged about 12 and 8 years respectively at the time of filing the complaint. Both the school going children are living with their father –applicant. It was also alleged before the court below that he is carrying salary of Rs. 4,780/- per month. Thereafter, the learned Magistrate has allowed the application filed by the respondent No.2 under section 125 Cr.P.C. and a sum of Rs. 700/- per month was granted to the wife as interim maintenance vide order dated 14.06.2004. Feeling aggrieved by this, both the parties preferred revisions before the Sessions Judge. After hearing both the parties, on 8.12.2004 the learned Sessions has dismissed the criminal revision No.8/2004 preferred by the applicant. However, the criminal revision No.9/2004 preferred by the respondent No.2-wife was partly allowed and monthly maintenance amount was enhanced to Rs. 850/- per month from Rs. 700/- per month.

Feeling aggrieved by this, the applicant has come up before this court.

The learned counsel for the applicant has not challenged the findings that there was cruelty with the respondent No.2 and she was unable to maintain

herself. The learned counsel for the applicant has also not challenged the finding of fact that the husband has refused and neglected to maintain her wife. The only challenge with regard to the quantum of maintenance allowance was made before the revisional court. Perusal of the record reveals that the respondent No.2 has alleged before the court below that he is earning Rs. 6500/- per month. Whereas the applicant admitted that his home carrying salary is Rs. 4,780/- per month. Out of which, the applicant has got insured the life of his two children and paying instalment of Rs. 334. The applicant has opened two R.D. account in the name of his children and contributing Rs. 300/- per month each. It is a well settled position of law that the contribution to L.I.C. as well as Recurring Deposits are only in the nature of saving out of which the applicant would get no benefit in future in any eventuality. Thus, the amount cannot be deducted from the actual amount while calculating the maintenance. It is also well settled position of law that standard of living of husband, wife and children should be equated and any of them should not be allowed to enjoy the better life in comparison to other spouse.

I have gone through the findings of the trial court and I am in completely agreement with the findings given by the revisional court. Therefore, no interference is required with the findings of the trial court.

The petition devoids of merit and is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 15.7.2005
LSR